

REPUBLIC OF VIETNAM

SUPREME COURT

CONSTITUTION PROTECTION COMMITTEE

Case No 2/70-TCPV/BH
TRAN NGOC CHAU

THE SUPREME COURT

c/

THE LOWER HOUSE
THE RVN GOVERNMENT

Considering the Constitution of the Republic of Vietnam promulgated on April 1, 1967;

Considering Law No 007/68 dated September 3, 1968 stipulating the organization and functioning of the Supreme Court;

Considering the main complain dated February 16, 1970 of lawyer VU VAN HUYEN representing and pleading for Deputy TRAN NGOC CHAU and the complaints dated February 25, 1970 opposing the decision of the III Corps Tactical Zone Mobile Military Field Court to decline to forward the incidental plea of Deputy TRAN NGOC CHAU to the Supreme Court;

Considering the pleas dated March 18, 1970 and April 24, 1970 of lawyer VU VAN HUYEN defending Deputy TRAN NGOC CHAU;

Considering the counter plea dated March 19, 1970 of the Lower House Speaker;

Considering the counter plea dated May 5, 1970 of lawyer NGUYEN VAN HOANG defending the Defense Ministry;

Considering the findings dated March 7, 1970 and May 4, 1970 of the Prosecutor General at the Supreme Court;

After hearing the report of Supreme Court Justice NGUYEN MONG BICH, member of the Constitution Protection Committee;

After hearing the pleas for Deputy TRAN NGOC CHAU of lawyers VU VAN MAU and VU VAN HUYEN;

After hearing the conclusion of the Prosecutor General;

After hearing the plea of lawyer THAI MANH TIEN for the Lower House;

After hearing the plea for the Defense Ministry of Lawyer NGUYEN VAN HOANG;

After deliberation;

Holds public trial with opposing parties :

IN FORM :

Seeing that the main complaint dated February 16, 1970 of lawyer VU VAN HUYEN representing Deputy TRAN NGOC CHAU, and the complaints dated February 25, 1970 and March 2, 1970 opposing the decision of the III Corps Tactical Zone Mobile Military Field Court are in legal order in accordance with articles 63, 64, and 66 of Law No 007/68 dated September 3, 1968;

Seeing that all the foregoing complaints are of the same objective, therefore should be put together to enable the trial with a single judgment;

Seeing that in the plea dated April 24, 1970 and afterwards at the trial session, the complainant requested to withdraw the main complaint on dated February 16, 1970 and the incidental plea dated February 25, 1970; and that the Lower House Speaker, represented by lawyer THAI MANH TIEN, requested to be put out of the case since the claims of the complainant against the Lower House had been withdrawn;

Hence, it is thought that the above confession of plea be recorded, the Lower House Speaker be put out of the case, and the incidental plea dated March 2, 1970 of the complainant be accepted;

IN SUBSTANCE :

Seeing that in the complaint dated March 2, 1970 opposing the decision of the III Corps Tactical Zone Mobile Military Field Court to decline from forwarding the incidental plea, Deputy Tran Ngoc Chau have requested the Supreme Court :

- to declare unconstitutional Decree-Law dated May 21, 1962 establishing the Military Field Court.

- to declare unconstitutional the order of direct trial of the Defense Minister ordering the trial of the complainant, and at the same time declare null the prosecution procedures including the March 5, 1970 sentence giving 10 years of hard labor to the complainant.

- to declare unconstitutional the imprisonment order dated February 19, 1970 of the Defense Minister.

CONCERNING DECREE-LAW 11/62 dated May 21, 1962

Seeing that in accordance with articles 3, 76, 77 and 78 of the 1967 Constitution, the independent judiciary powers are entrusted to the Supreme Court and executed by various Courts with the composition of professional judges and prosecutors, in line with the procedure of respecting the right to legal counsel, and under the control of the Supreme Court;

Seeing that the Military Field Court with the existing composition and formalities prescribed by Decree-law 11/62 dated May 21, 1962 no longer meets the requirements for Courts as a result of the foregoing articles;

Seeing that the judiciary powers are entrusted to the Supreme Court and thus the appointment of a judging composition must be assumed by that agency, therefore the appointment of the chief judge by an order of the President and the establishment of the assessors' list by the Defense Minister are no longer suitable to the Constitution;

Seeing that according to the existing organization, the chief judge and assessors of the Military Field Court do not belong to the professional judging composition, but are officers and non-commissioned officers serving in the four Corps Tactical Zones;

Seeing that according to the procedures applied before the Military Field Court prescribed by Ordinance No. 8 dated May 16, 1954, the responsible authorities entitled to initiate prosecution may bring the offense direct to the court, without needing a preliminary interrogation, although the offense may lead to a death penalty; this right is contrary to article 26 of the Code of Military Justice which stipulated a direct trial of an accused liable to death penalty should be restricted within the circumstances the laws have defined, it is also contrary to the principle of respecting the right to legal counsel of accused since the omission of the phase of judicial inquiry in an infraction of the law lead to a death penalty;

Seeing that in accordance with the above-mentioned Ordinance No 8, there is no need for any period of time beginning from the day the writ of summons is sent to the defendant to the trial session of the court, meanwhile the Code of Military Justice, article 26 reserves for the defendant a period of 3 days in peace time and 24 hours in war time; the omission of giving to the defendant a minimum period of time between the day he is summoned and the trial session is the absence of respect for the right to legal counsel;

Seeing that when stipulating that, if necessary, the defense counsel may be appointed besides the number of lawyers whose names have been recorded in the list or who have been admitted into probation, article 4 of Ordinance No 8 did not give the defendant the right to legal counsel in all interrogation phases approved by the Constitution;

Seeing that when stipulating all means to appeal against a sentence of the Military Field Court, and the verdict will be executed after the deliverance, articles 12 and 13 paragraph 1 of Decree-Law 11/62 have put the chief judges and assessors outside the constitutional control of the Supreme Court;

Thus articles 3, 4, 5, 9, 12, and 13 paragraph 1 of Decree-Law 11/62 dated May 21, 1962 prescribing the organisation of the Military Field Court have contradicted articles 3, 76, 77, 78 and article 7, paragraph 6 of the Constitution.

CONCERNING THE DECISION TO PROSECUTE DEPUTY TRAN NGOC CHAU

Seeing that in accordance with article 37, paragraph 2 of the Constitution, during the whole term of office, except in case of offense of flagrant delicto nature, a Deputy may be prosecuted only on the approval of three-fourths of the total number of Deputies;

Seeing that the charge on Deputy TRAN NGOC CHAU for having connexion with a man whose actions were harmful to national defense during the period from January, 1965 to April 6, 1969; these actions, if any, have lost their timeliness which is required in article 41 of the Code of Criminal Procedures concerning offenses of flagrant delicto nature;

Seeing that the approval of three fourths of the total number of Deputies or Senators mentioned in article 37 paragraph 2 of the Constitution must be result of a debate and vote at a plenary session of the concerned Lower or Upper House (the judgment explaining the Constitution on March 24, 1970 of the Supreme Court General Assembly.);

Seeing that Deputy TRAN NGOC CHAU was prosecuted besides the case of flagrant delicto offense and the initiation of prosecution was not based on the approval of three fourths of the total number of Deputies in a vote, therefore the prosecution has violated article 37 paragraph 2 of the constitution.

Concerning the imprisonment order.

Seeing that Deputy TRAN NGOC CHAU has requested the Supreme Court to declare unconstitutional and null the procedures of prosecution which have been carried-out including the sentence dated March 2, 1970 of the Military Field Court giving the complainant 10 years of hard labor, and the Imprisonment Order signed by the Defense Minister on February 19, 1970;

But seeing that article 80 of Law 007/68 dated September 3, 1968 stipulating that the request to annul final judgments lies in the jurisdiction of the Supreme Court Cassation Committee, the formalities for quashing a verdict are different from those for constitution protection described in article 70 of the above Law, the complainant must apply for the annulment of the verdict in accordance with the prescribed formalities;

Seeing that the Imprisonment Order dated February 19, 1970 of the Defense Minister, the execution of which was temporarily postponed until the Court hands down its verdict, must depend on the lot of this verdict.

FOR THESE REASONS :

IN FORM :

Acknowledges the confession of plea of the complainant concerning the main complaint dated February 16, 1970 and the incidental plea dated February 25, 1970.

- Orders that the Lower House Speaker be put out of the case.

- Accepts the complaint dated March 2, 1970 of the complainant opposing the decision taken on the same day by the III Corps Tactical Zone Mobile Military Field Court in declining to submit to the Supreme Court the incidental plea dated March 2, 1970 made before the above-said Military Court.

IN SUBSTANCE :

- Declares unconstitutional articles 3, 4, 5, 9, 12 and 13 paragraph 1 of Decree-Law No 11/62 dated May 21, 1962 providing the organization of the Military Field Court since they contradict articles 3, 76, 77, 78 and article 7 paragraph 6 of the Constitution.

- Declares unconstitutional the decision to prosecute Deputy TRAN NGOC CHAU since it was based neither on the case of flagrant delicto offense nor on the approval of three fourths of the total number of Deputies in a debate and vote, thus it has violated article 37, paragraph 2 of the Constitution.

- Declares that the request for an annulment of the March 2, 1970 sentence of the III Corps Tactical Zone Mobile Military Field Court as well as the imprisonment order dated February 19, 1970 belongs to the cassation formalities.

- Orders the return of the envisaged fine to the complainant.

- Orders the publication of this judgment in the Gazette of the Republic of Vietnam within a 15-day period beginning from the day of the verdict pronouncement.

- The verdict was read on May 5, 1970 at the open trial session of the Supreme Court General Assembly composed of nine Supreme Court Justices :

Messrs.

- TRAN MINH TIET
- NGUYEN VAN SI

Presiding judge

9/14

- NGUYEN VAN BIEN
- TRAN VAN LINH
- MAI VAN AN
- TRAN VAN LIEM
- TRINH XUAN NGAN
- NGUYEN AN THONG
- NGUYEN MONG BICH

In the presence of Messrs. :

- | | |
|----------------|--------------------|
| - VU TIEN HUAN | Prosecutor General |
| - VU DUY THUAT | Clerk of the Court |

Certified true copy :

SECRETARY GENERAL OF THE SUPREME COURT,

signed and sealed.

VO VAN DIEU.